



Attorney General

1275 WEST WASHINGTON

Phoenix, Arizona 85007

Robert E. Corbin

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ARIZONA ATTORNEY GENERAL

May 17, 1984

Mr. Douglas R. Norton
Auditor General
111 West Monroe, Suite 600
Phoenix, Arizona 85003

Re: I84-072 (R84-056)

Dear Mr. Norton:

You have asked what actions the Auditor General may take when a county, community college district, city or town refuses to file annual financial statements and/or an annual expenditure limitation report as required by A.R.S. § 41-1279.07. Specifically, the legislature has directed the Auditor General to prescribe a uniform expenditure reporting system for all political subdivisions which are subject to the constitutional expenditure limitations imposed by Ariz. Const., Art. IX, §§ 20 and 21. A.R.S. § 41-1279.07.A. This system requires that counties, community college districts, cities and towns submit an annual expenditure limitation report and annual financial statements prepared in accordance with generally accepted accounting principles.¹ A.R.S. § 41-1279.07.A. These reports must be filed with the Auditor General within four months after the close of each fiscal year unless an extension is granted by the Auditor General. A.R.S. § 41-1279.07.C. Once the reports are submitted, the Auditor General is empowered to hold a hearing to determine if a particular political subdivision has exceeded the constitutional expenditure limitations.² A.R.S. § 41-1279.07.H.

¹In the case of towns, A.R.S. § 9-481 requires that annual financial statements be audited and submitted biannually.

²It is our understanding that the Auditor General, pursuant to this authority, has promulgated rules to implement the hearing procedures prescribed by this statute.

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A.R.S. § 41-1279.22.A mandates that all county and community college district officers make returns and exhibits to the Auditor General under oath "in the form and at the time he prescribes." As to cities and towns, A.R.S. § 9-481.A requires the city or town council of each incorporated city or town to cause an audit to be made in accordance with the provisions of that statute. If a county or community college district officer or a city or town council fails to comply with the pertinent statutes, the Auditor General may seek a court order compelling these officers to perform their statutory duties. See A.R.S. § 12-2021.

Moreover, the legislature has made criminal sanctions available in certain instances. In the case of a county or community college district, any officers of those political subdivisions who knowingly fail or refuse to make the prescribed returns or to give information as required are guilty of a class 5 felony. A.R.S. § 41-1279.22.B.³ In addition, A.R.S. § 41-1279.07.G imposes this sanction upon a chief fiscal officer who refuses to file the required reports within the prescribed time periods or who intentionally files erroneous reports:

A chief fiscal officer, designated pursuant to subsection E of this section, who subsequent to July 1, 1983, refuses to file the reports required by this section within the prescribed time periods or who intentionally files erroneous reports is guilty of a class 1 misdemeanor.

Finally, we note that the Auditor General's power to hold a hearing to determine if a political subdivision has exceeded the expenditure limitations is independent of the

³A.R.S. § 41-1279.22.B also provides that any person who otherwise knowingly obstructs or misleads the Auditor General in the execution of his duties is guilty of a class 1 misdemeanor. However, unlike the class 5 felony provision of paragraph B, the class 1 misdemeanor provision is confined to Article 10.2 of Chapter 7 of Title 41. The provisions relating to the uniform expenditure reporting system are contained in Article 10.1 of Chapter 7 of Title 41.

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requirement that a report be submitted. Thus, even if a county, community college district, city or town refuses to file an annual financial statement and/or annual expenditure limitation report as required, the Auditor General may hold a hearing to determine if that political subdivision has exceeded the expenditure limitations prescribed by the Constitution.

Very truly yours,

Bob Corbin

BOB CORBIN
Attorney General

BC:SMS:kmc